

General Information Letter: Statutory authorization for issuance of levies by the Department discussed.

January 18, 2001

Dear:

This letter is in response to your letter dated January 9, 2001 to Mary Lou Lovell of the Department's Collection Bureau. In your letter you request a statement of the Department's position on several issues you have identified with respect to a levy issued to xxxxxxxx, Inc. for purposes of collecting Illinois tax liabilities owed by xxxxxxxxxxxxxxxx, d/b/a xxxxxxxxxxxxxxxx. The nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department.¹

In your letter you have stated the following:

In reply to yours of January 4, 2001:

- Regarding your unlawful Levy (xxxxxxx is not a Financial Institution), you are nevertheless limited to 15% if you unlawfully proceed. Read the "Excerpt" you sent to me. It provides,

"The provisions of Section 12-803 of the Code of Civil Procedure relating to maximum compensation subject to collection under wage deduction orders shall apply to *all* levies made upon compensation under this Section.* (emphasis added).

I hope xxxxxxxx will resist your unlawful Levy until we can resolve this very questionable issue.

- xxxxxxxxxxxx will be filing the requested returns or amended returns just as soon as we can obtain the necessary IL forms. In my letter of January 3, 2001, I requested that you fax the forms to me, but apparently you will neither fax nor mail them.
- Again, it would be a rational decision to put this matter on hold for two weeks until we can file the requested returns. Will you do so?

Response

First, you allege that the levy is unlawful, based upon the fact that xxxxxxxx is not a financial institution. Section 5/1109 of the Illinois Income Tax Act includes a grant of levy authority that is limited to assets held by financial institutions.² However, Section 5/1109 also includes the following distinct grant of levy authority that is in no way limited to assets held by financial institutions:

In addition to any other provisions of this Section, any officer or employee of the Department designated in writing by the Director may levy upon the following property and rights to property belonging to a taxpayer: contractual payments, accounts and

notes receivable and other evidences of debt, and interest on bonds, by serving a notice of levy on the person making such payment.

Therefore, the Department is statutorily authorized to issue levies to entities which are not financial institutions.

Next, you allege that the levy on xxxxxxxxxx contractual payments to xxxxxxxxxx is subject to the cap imposed by Section 12-803 of the Code of Civil Procedure. The limits set forth in Section 12-803, and expressly incorporated by Section 1109 of the Income Tax Act, apply only to levies on compensation. Compensation consists of the salary, wages, commissions, and bonuses of an employee.³ Thus, the limits set forth in Section 12-803 apply to a particular levy only if the tax debtor is the recipient's employee (rather than contractor) and the payments are compensation (rather than contractual payments). Of course, while the characterization of a tax debtor as an employee may invoke the limitations of Section 12-803, such characterization would also impose upon the employer additional burdens, including the duty to withhold Illinois income tax from its payments to the employee.⁴

Additionally, your letter states your hope that xxxxxxxx will "resist" the levy issued by the Department in this matter. Compliance with a Department of Revenue levy is mandatory.⁵ Releasing funds to the taxpayer in contravention of the Department's levy may subject the non-complying party to liability up to the total amount of the underlying debt.⁶

Finally, your letter describes xxxxxxxxxx intent to provide documentation that may alter or eliminate the underlying liability upon which the Department's levy is based. The Department welcomes any additional documentation a taxpayer may choose to provide. However, a final tax liability remains valid and fully collectable until it is actually reduced or eliminated. The Department is not compelled to forego collection on such debt based upon a taxpayer's declaration of a future intent to provide documentation which may or may not result in a change to the liability.

As stated above, this is a general information letter which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b). Please feel free to address to me any further questions you may have regarding the levy at issue. However, please note that the fact that you may choose to continue a dialogue with the Department regarding this levy in no way delays or eliminates the duty of compliance which the levy imposes upon the recipient.

Sincerely,

James Allen Day
Staff Attorney, General Law Office

¹ This letter is issued pursuant to the Illinois Department of Revenue Sunshine Act, 20 ILCS 2515/1 et seq. *See further* 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's web site at www.revenue.state.il.us.

² This clause appears in the first sentence of the second paragraph of §1109.

³ 735 ILCS 5/12-803; 35 ILCS 5/1501(a)(3).

⁴ See Article 7 of the Illinois Income Tax Act, 35 ILCS 5/701 et seq.

⁵ 35 ILCS 5/1109.

⁶ IT-97-0072-GIL.